

In the Matter of Merchant Mariner's Document No. Z-389970-D1
Issued to: NATHANIEL L. JOHNSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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NATHANIEL L. JOHNSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 19 January, 1951, an Examiner of the United States Coast Guard at Norfolk, Virginia, revoked Merchant Mariner's Document No. Z-389970-D1 issued to Nathaniel L. Johnson upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as workaway on board the American SS AFRICAN DAWN under authority of the document above described, on or about 2 December, 1950, while said vessel was in the port of Norfolk, Virginia, he wrongfully had in his possession certain narcotics; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection. Appellant voluntarily elected to waive that right and act as his own counsel. He originally entered a plea of "not guilty" to the charge and specification proffered against him but, subsequent to the Investigating Officer's opening statement, Appellant changed his plea to "guilty" without any action having been taken to induce Appellant to follow this course. Appellant simply voluntarily stated that he had "decided to plead guilty with an explanation" (R.4)

Appellant then testified in mitigation stating that he knew the marijuana was on the vessel but that the marijuana had never been in his possession aboard the ship; and that, after he had left the ship, another crew member took the marijuana off the ship and tied it to Appellant's back while he was on the pier where the vessel was berthed.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by plea and entered the order revoking Appellant's Merchant Mariner's Document No. Z-389970-D1 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant had signed off the ship on 1 December, 1950; that thereafter he had entered into an agreement with a crew member while in Norfolk; that the marijuana did not belong to Appellant and it was not in his possession aboard ship; that Appellant was neither under articles nor in any way serving aboard the vessel when apprehended by Federal authorities; and that, therefore, he was not under the jurisdiction of the Coast Guard at the time of his apprehension.

FINDINGS OF FACT

For sometime prior to 2 December, 1950, Appellant had served, under authority of his Merchant Mariner's Document No. Z-389970-D1, as a workaway on board the American SS AFRICAN DAWN which terminated its voyage and paid off the crew at Norfolk, Virginia, on 1 December, 1950.

During his service on said vessel, Appellant met William P. Brown, another seaman on the same vessel, and learned from Brown that a quantity of marijuana was aboard the vessel (R.5)

For the purpose of this decision I accept Appellant's testimony that following his discharge from the Shipping Articles of the AFRICAN DAWN on 1 December, 1950, Appellant was contacted by Brown and an arrangement perfected between them for Appellant to carry the marijuana on his person through Customs at Norfolk; and that Brown undertook to remove the marijuana from the vessel and transfer it to Appellant who remained on the dock.

On 2 December, 1950, Appellant was apprehended by two United States Customs inspectors with about three pounds of marijuana strapped on his back under his clothing. Appellant was leaving the dock where the ship was moored and he was accompanied by Brown. Appellant was taken into custody and upon entering a plea of guilty to a violation of 26 U.S.C. 2593 (a) in the District Court of the United States for the District of Virginia, he was convicted on 19 January, 1951, and sentenced to thirty months imprisonment. Appellant was represented by counsel at his trial in the Federal Court.

OPINION

Appellant stated that he knew the marijuana was aboard the ship and that he was to get fifty per cent of it, or the proceeds therefrom, for his assistance in smuggling it ashore. Appellant testified that he came aboard the ship in Africa as a workaway to be repatriated to the United States. His defense is based on the claim that the arrangements to take the marijuana ashore were made after Appellant had signed off the articles on 1 December, 1950, and that he did not himself return aboard the ship to obtain the marijuana but waited on the dock while Brown took the narcotics off the vessel and immediately turned it over to Appellant.

My previous decisions in somewhat similar cases have stated that misconduct is subject to proceedings under 46 U.S.C. 239 even though the seaman committing the offense has signed off the Shipping Articles a short time before the misconduct occurred. This is true when there is a close causal connection between the offense in question and the seaman's service aboard the ship. In other words, the jurisdiction of the Coast Guard extends to those cases where there is evidence of a

continued and proximate relationship between such service and the offense committed although the offense is consummated after the seaman has formally completed his service on the vessel by signing off the Shipping Articles.

On the facts of this case I find no difficulty in adhering to my views as earlier stated. Appellant knew the marijuana was on the vessel which brought him back to the United States as a workaway. Because of his straitened financial condition he readily assented to assist another shipmate in the wrongful introduction of marijuana into Norfolk, Virginia.

Whether he took the marijuana onto his person while aboard the vessel or on the dock seems immaterial since he was directly implicated in the removal of the marijuana from the ship on which he served and by conspiring with Brown, Appellant was guilty of constructive, if not physical, possession of the marijuana on board the ship on 2 December, 1950.

CONCLUSION

The record, based on Appellant's own testimony, demonstrates that as an American merchant seaman he took a most active part toward promoting the unrestricted distribution of narcotics in contravention of law and public morals. He is undesirable as an American merchant seaman.

ORDER

The order of the Examiner dated 19 January, 1951, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 13th day of March, 1952.